

April 27, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
12th Street Lobby, TW-A325
Washington, D.C. 20554

Re: *Ex Parte* Communication, CC Docket 94-102

Dear Ms. Dortch:

On April 27, 2007, Christopher Guttman-McCabe, Brian Josef, and Lori McGarry, CTIA – The Wireless Association,® along with Lolita Forbes of Verizon Wireless and Kathleen Ham of T-Mobile USA, met with Bruce Gottlieb, Legal Advisor to Commissioner Michael Copps, to highlight CTIA’s support for efforts to investigate improvements to Enhanced 911 (“E-911”) capabilities, and to raise concerns regarding potential FCC action on PSAP-level testing requirements for E-911 technologies without a notice and comment process. CTIA is concerned about such action and respectfully urges the Commission to consider this change only through a notice and comment rulemaking proceeding.

CTIA and the wireless industry for many years have worked with the E-911 community to deploy state of the art wireless location technologies. CTIA members have invested – and continue to invest – enormous financial and personnel resources to deploy and maintain improved E-911 systems and services to achieve the common goal of saving lives. Additionally, members will continue to work with the Commission and with the Public Safety community on E-911 efforts. CTIA is concerned, however, that the Commission is moving forward with a new testing methodology without seeking formal comment from either Public Safety or the wireless industry.

CTIA is proud of the progress the wireless industry has made deploying advanced E-911 services to the nation’s 230 million wireless subscribers, and urges the Commission to be cognizant that no telecommunications service can offer perfect E-911 service to all of its consumers. As an April 6, 2007 New York Times article reports, many communities have not deployed Phase II (or in some cases even Phase I E-911 technologies) due to lack of funding and other problems.¹ In many communities across the nation, there is simply no E-911 capability to test.

The Commission clearly has acknowledged the difficulty in providing wireless E-911 service. Indeed, in adopting the wireless location accuracy rules in CC Docket 94-102, the Commission recognized that the laws of physics impose practical limitations on wireless location accuracy. For that very reason, Section 20.18 of the FCC’s rules does not require wireless carriers to

¹ Shaila Dewan, *An S O S for 911 Systems in Age of High-Tech*, NYTimes.com, April 6, 2007.

provide 100% location accuracy, and it is in part why the FCC affirmatively has declined to impose a specific accuracy testing methodology.

As the Commission considers procedurally how to evaluate a potential change in the testing requirements, CTIA notes that there is no record – nor even a proceeding – before the Commission that would suggest that the Commission should impose PSAP or community-level testing as a new requirement on wireless carriers. The above-mentioned press story refers to a request from the Association of Public-Safety Communications Officials - International (“APCO”) to require local testing. That request was filed with the Commission as a petition for declaratory ruling in October 2004 and was subsequently amended in February of 2005 to support testing on a cellular service area (MSA/RSA) basis.² APCO’s declaratory ruling request and its recently-released Project LOCATE report concede that PSAP-level testing is *not* presently required under the rules. The Commission has not issued an *NPRM* or public notice on that amended petition, nor sought comment on it in any other way.

The Commission’s Network Reliability and Information Council -VII (“NRIC”) was convened in April 2004, with one of its express purposes to study E-911 accuracy and testing methodologies. Dozens of technical and other subject matter experts from public safety agencies, vendors of 911 equipment and software, and carriers worked for over a year and a half on these matters and, in February 2006, produced a detailed report to the Commission. In their report, these experts recommended the adoption of numerous new testing procedures aimed at ensuring that E-911 services are optimized. They did not, however, support PSAP-level testing. This report was adopted by 24 of the 25 NRIC participants. The Commission has not sought comment on NRIC’s recommendations.

While the Commission has not sought comment on either the NRIC report or the APCO petition, it repeatedly has made clear that its rules do not impose *any* particular geographic area requirement for purposes of accuracy compliance testing, much less PSAP-level testing. In the *Third Report & Order* adopting Section 20.18(h), the Commission explained that it had “declined to adopt specific methods for measuring compliance with the E911 rules, relying instead upon the parties to resolve technical issues in good faith” and expressly continued that policy in directing the Office of Engineering & Technology (“OET”) to “develop and publish methods that *may* be used for verifying compliance with our rules governing Phase II.”³ Consistent with this mandate, OET has provided non-binding guidelines for wireless carriers, which OET has explained are “*not intended to establish mandatory procedures*” and that “*other methods and procedures may be acceptable if based on sound engineering and statistical practices.*”⁴ The Commission subsequently permitted system-wide measurement under OET Bulletin No. 71 in enforcement actions, finding that “accuracy testing may be based on, *among other things*, the coverage area of local PSAPs that request Phase II

² *In re* Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Supplement to Request for Declaratory Ruling of the Association of Public-Safety Communications Officials-International, Inc., CC Dkt. No. 94-102 (Feb. 4, 2005).

³ *See* Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Third Report and Order, 14 FCC Rcd 17388, 17426 ¶¶ 83-85 (1999) (emphasis supplied) (“*Third Report & Order*”), *aff’d in relevant part*, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, ¶¶ 83-85 (2000).

⁴ OET Bulletin No. 71, *Guidelines for Testing and Verifying the Accuracy of Wireless E911 Location Systems*, at 2, 4 (rel. Apr. 12, 2000) (emphasis in original).

deployment *or* the wireless carrier's entire advertised coverage within a metropolitan area.”⁵ Thus, the rule does not require any specific geographic area for compliance testing purposes (as APCO itself concedes), and the Commission has definitively interpreted the rule as such. Imposing accuracy testing at the PSAP level or any particular geographic area therefore requires a notice and comment rulemaking.⁶

CTIA believes that the correct course of action is to follow the general process under the Administrative Procedure Act and the Commission's Rules, and address APCO's petition following notice and comment. Significantly, wireless operators have gained a substantial body of knowledge since the time of APCO's original filing in late 2004 on E-911 deployment, and that experience should help inform the Commission's deliberations on these issues. CTIA is ready and willing to work with the Commission and the Public Safety community on that effort, and on E-911 issues going forward.

Thank you for the opportunity to present our views. Pursuant to Section 1.1206 of the Commission's Rules, this letter is being electronically filed with your office. If you have any questions regarding this submission, please contact the undersigned.

Sincerely,

/s/ Christopher Guttman-McCabe

Christopher Guttman-McCabe
Vice President, Regulatory Affairs
CTIA – The Wireless Association®

cc: Bruce Gottlieb

⁵ See *Cingular Wireless Consent Decree*, 18 FCC Rcd 11746, n.9 (2003) (emphasis added); *Cingular Wireless Consent Decree*, 17 FCC Rcd 8529, n.7 (2002) (referencing “network-wide location accuracy”).

⁶ See 5 U.S.C. § 553(c); *Sprint Corp. v. FCC*, 315 F.3d 369, 374 (D.C. Cir. 2003) (“when an agency changes the rules of the game. . . more than a clarification has occurred.”); *SBC Inc. v. FCC*, 414 F.3d 486, 501 n.8 (3d Cir. 2005) (describing *Caruso v. Blockbuster-Sony Music Entertainment Centre*, 193 F.3d 730 (3d Cir. 1999)); *United States v. Picciotto*, 875 F.2d 345, 346-48 (D.C. Cir. 1989) (where “open-ended” rule provided that a “permit may contain additional reasonable conditions,” imposing additional conditions required notice and comment); *Shalala v. Guernsey Memorial Hosp.*, 514 U.S. 87 (1995) (modifying a definitive interpretation of a rule requires notice and comment); *Alaska Professional Hunters Ass’n, Inc. v. FAA*, 177 F.3d 1030, 1034 (D.C. Cir. 1999) (same); *Paralyzed Veterans of America v. D.C Arena*, 117 F.3d 579, 586 (D.C. Cir. 1997) (same).